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Office of the R.L.A.

In Civil Suit No. 218 of 1935 the plaintiff were given a decree against Government as follows :-

(1) Plaintiffs do recover Rs. 7746-0-0 inclusive of interest etc. as compensation for the damage done to the lemon trees, pomegranates and banana plantations.

(2) Defendant (Government) is permanently directed to take every possible care and do do every possible extra work to divert the stagnated water from plaintiffs' lands and to prevent the undergreund percolations from the canal embankment within six months from today etc. If not, plaintiffs to get those works done at their cost to be recovered from Government during execution proceedings.

(3) Government is at leberty to acquire the damaged acreage of plaintiffs within six months from today in case they cannot give satisfactory and final relief to plaintiffs.

On appeal, the High Court confirmed the decree of the lower court as respects the award of compensation and directed: "We think it better to give a general injunction to the plaintiffs directing Government within six months to take such steps as will make the drainage of the plaintiffs' land as effective as it was before the construction of the canal, or in the alternative to take steps to acquire the plaintiffs' land; and we substitute an injunction accordingly for the injunction granted by the trial court. In other respects the Order of the trial court will stand".

It appears that Government has now decided to acquire the plaintiffs' land. The question raised for the consideratin of the R.L.A. is whether the compensation is to be determined on the basis of the condition of the land in which it exists at present i.e. water legged and damaged or on the theoretical

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condition in which it would have been were it not damaged by the construction of the canal.

It appears clear from the decree of the trial court and the decree of the High Court that the plaintiffs were not awarded any compensation for the damage done to their land by the construction of the canal but were given an injunction requiring Government to take steps to make the drainage of their land as effective as it was before the construction of the canal. This right of the plaintiffs against Government is an interest which requires to be valued while assessing the market value of the land. In other words, Government will have to pay compensation according to the present market value of the plaintiffs' land on the basis that the drainage of the land is made as effective as it was before the construction of the canal.

Sd/- P.N.MOOS.
19/9/45.

Remembrancer of Legal Affairs.

U.R. to P.W.D., No. 6906, dated the 20th September 1945.

SMT/12.7.

Secretary R.D.'s proposal is to acquire under the Land Acquisition Act,1894, certain khar mthar and other lands which may come under command of the bunds to be put up with a view to securing efficient cultivation of these lands. Necessary bunds are to be put up and kept in repair by Government after the lands are acquired and these lands will be leased direct to the existing tenants or holder-cultivators at a rent to be fixed by Government on the basis of a fair return on the capital invested in acquiring the lands and putting up and maintaining the bunds. The question referred to the R.L.A. for consideration is whether the purpose for which the lands are to be acquired will come within the meaning of "public purpose" under the Land Acquisition Act.

2. The expression "public purpose" is not defined in the Land Acquisition Act, 1894. The following remark by Batchler J. regarding the meaning of the words "public puppose" in the Land Acquisition Act was approved by the Privy Council in I.L.R. 39 Bom. 279 at p.295:

> "The phrase, whatever else it may mean, must include a purpose, that is, an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned."

The expression "public purpose" has thus a wide meaning. It appears that any land may be acquired under the Act if, in the opinion of Government, its acquisition is required for the purpose of promoting the interests of the community. In considering the interests of the community for this purpose it is reasonable to conclude that it is open to Government to look ahead. If in the opinion of Government publid interest requires certain lands to be purchased for reasons of economy now instead of at a future date then the correct view appears to be that the land is needed for a public purpose (see R.L.A.'s No.838 dated 18-5-1921 and No.172-P dated 29-8-1916)

The development of a site as municipal estate comprising school, play-ground, quarters for municipal servants has been held to be a public purpose within the meaning of section 4 of the Land Acquisition Act, 1894, and under section 6(3) the declaration made by Government is conclusive evidence that it is so required (Municipal Corporation v.Ranchordas, 27 B.L.R. 1130). As pointed out by Broomfield J. in Parshottam v. Secretary of State, 39 Bom.L.R. 1257: "What is required for a valid notification under section 4 of the Land Acquisition Act is that it should have appeared to the Local Government that the land in question was needed or likely to be needed for a public purpose." Since, in the present case, the khar and other lands are required for securing their efficient cultivation and for improving the lands in the same area, the acquisition can, it seems, be held to be for a public purpose. Under section 4 of the Act it is the Provincial Government which is to be satisfied as to the existence of a public purpose and a declaration to that effect under section 6(3) will be final and conclusive. Consequently it will not be open to any owner to contend in a Civil Court that the land was not needed for a public purpose.

Sd/- P.N.MODS.
13/4/45.

Remembrancer of Legal Affairs.

U.R. to R.D., No. 8507 , dated the 14th November 1945.

SRT/12.7.